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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,703	01/15/2004	Robert E. Platt	1522006US1AP	8439

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EXAMINER

CHAPMAN, JEANETTE E

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 05/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,703	Applicant(s) PLATT, ROBERT E.	
	Examiner Chapman E. Jeanette	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7, 9-22 and 26-30 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>patent copy w/annotations</u> . |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Brock (2527982)

Brock discloses a post leveling assembly comprising:

1. a base 2 mounted to a post 1
 - a. the base includes
 - i. top edge
 - ii. bottom edge
 - iii. front surface
 - iv. back surface or a rear wall
 - v. an aperture, adjacent reference number 5 or receive element 5, proximate the top edge
2. at least one arm 6 pivotally mounted to the base; the pivotal movement being in a single plane that is disposed substantially parallel to the rear wall of the base
3. the arm is mounted onto the base by a pin 5 that is received in the aperture; the aperture extends from the front surface of the base through to the back surface of the base
4. the said arm pivots freely in response to movements of the post; the spherical .

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5. An indicator 8 on the arm comprises
 - a. A V shape lower end of the arm that terminated in an apex and wherein the apex aligns the marker when the post is vertical and does not align with the marker when the post is not vertical. See below.
6. alignment of the indicator with said marker indicates that the post is vertical
7. nonalignment of the indicator with the marker indicates that the post is not vertical;
8. the marker is a symbol.

Claims 1-4, 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Auld (790813)

Brock discloses a post leveling assembly comprising:

9. a base 1-3,5 mounted to a post ; see figure 1
 - a. the base includes
 - i. top edge
 - ii. bottom edge
 - iii. front surface
 - iv. back surface or a rear wall
 - v. an aperture, adjacent reference number 5 or receive element 5, proximate the top edge
10. at least one arm 7 pivotally mounted to the base; the pivotal movement being in a single plane that is disposed substantially parallel to the rear wall of the base

11. the arm is mounted onto the base by a pin 6 that is received in the aperture; the aperture extends from the front surface of the base through to the back surface of the base
12. the said arm pivots freely in response to movements of the post; the spherical
13. An indicator on the arm comprises
 - a. A V shape lower end of the arm that terminated in an apex and wherein the apex aligns the marker when the post is vertical and does not align with the marker when the post is not vertical. See below.
14. alignment of the indicator with said marker indicates that the post is vertical
15. nonalignment of the indicator with the marker indicates that the post is not vertical;
16. the marker is a symbol.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock or Auld in view of Cavazos (4771546). Neither Brock nor Auld discloses discloses a marker comprising a dent that projects outwardly from the front surface of the base and a second apex of the detent and the apex of the arm aligning with the second apex of the detent when the post is vertical and which does not align when the post is not

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vertical. Cavazos discloses a leveling device with a base and an arm with an apex. The base includes

1. a marker disposed on the base comprises
 - a. a detent 21 that projects from the front surface of the base since the same is a plate attached to the base
 - i. a second apex; see annotations on patent copy
2. the apex of the arm aligns with the apex of the detent when the post is vertical and does not align when the post is not vertical

In view of the above, it would have been obvious to include the marker with the above limitations to change the marker when desired to change from symbols to grooves or ridges and to provide a means to calibrate the marker when necessary as shown by Cavazos. The shape of the detent has been considered a matter of choice. One of ordinary skill in the art would have selected any shape commensurate with the use, purpose and function of the invention making the marker easy to read.

Claims 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock or Auld in view of Hunter (6370784) and Elasser (6467756). Brock and Auld show the post leveling assembly is permanently mounted to the post but lacks the post with a core and a removable sleeve and the post leveling assembly permanently mounted onto the core. Elasser discloses a post 15 with a core 14 and a sleeve 16 which may be removed upon removing the nail 19. Hunter discloses a post (wellbore casing) with a core 8 and a removable sleeve/cover 10 and the leveling assembly 2/4/6 permanently

mounted onto the core 8. The base 6 is permanently mounted to the core 8 and then covered by a removable sleeve/cover 10 installed over the core 8. There is a space between the core 8 and the cover 10 and a leveling device is disposed within the space between the core and the cover. In view of the above it would have been obvious to one of ordinary skill in the art to modify either Brock or Auld to include the level indicator inside a post for the convenience of the use in selling the indicator on a post or as a single unit.

Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock or Auld in view of Hunter (6370784) and Elasser (6467756). see above

Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brock or Auld in view of Foss et al (5956855).

Color coding is common on many mechanical devices. The purpose and function of color coding does not change when used on various objects. One of ordinary skill in the art would have appreciated using any indication means which was or is commensurate with the purpose and function of the indicator. Foss discloses a level indicator using color coding. Foss does not disclose the marker of one color and the arm, marker and base of different and strongly contrasting colors. One of ordinary skill in the art would have appreciated using color coding in any manner commensurate with the function and purpose of the indicator device.

Claims 11-13, 16-18, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auld in view of Gruetzmacher (5207004) and. Auld shows the square post with corners on which the base member is received but lacks the base

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member which is L shaped in cross section. Gruetzmacher discloses a post level with an L-shaped base. The base has two legs disposed perpendicular to one another and includes a level indicator on each leg. Each leg has front and back surface and the back surface abuts the post. Each leg has an aperture 62/64 extending inwardly from the front to the back surface. It would have been obvious to one of ordinary skill in the art to modify Auld to include the L shaped base accommodating two level indicators as taught by Gruetzmacher in order to be able to read the indicator from more than one side or angle. It is clear with the above modification Gruetzmacher, the indicator of Auld would now include two arms and two markers as the indicator on both legs of Gruetzmacher include identical structures.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auld in view of Gruetzmacher and further in view of Elasser and Hunter. See above for the how the references are applied to Auld. Auld discloses his base connected to the post by a screw or nail 4 since the screw hole is shown. One of ordinary skill in the art would have appreciated connecting the base to the core by any suitable and well known securing means such as screws.

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auld in view of Gruetzmacher (5207004) as applied to claim 18 and further in view of Cavazos. The Cavazos reference is applied in the same manner as described above

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Auld in view of Gruetzmacher (5207004) as applied to claim 11 and further in view of Foss et al. Foss is applied in the same manner as described above

Claims 23-25 have been withdrawn as not being directed to the elected invention

Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Auld in view of Gruetzmacher (5207004). Gruetzmacher discloses an indicator with two legs with an indicator and a third indicator for alignment to show the verticalness of the post. It would have been obvious to one of ordinary skill in the art to include the all three indicators in order to provide a range of readers to ensure a perfectly upright post as taught by Gruetzmacher.

Applicant's arguments with respect to claims 1-7, 9-22 and 26-30 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JEANETTE E. CHAPMAN
PRIMARY PATENT EXAMINER
ART UNIT 3635

FIG. 2

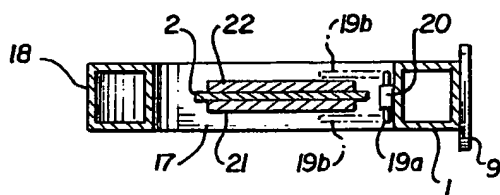


FIG. 3

